JAMES JOHNSTON

VS.

THE MINISTER AND TRUSTEES OF ST. ANDREW'S CHURCH:

The Ecclesiastical Bearings of the Case.

BEING

A REVIEW OF THE JUDGMENT

RENDERED THEREON BY HIS HONOR, MR. JUSTICE JOHNSON, 30TH DECEMBER, 1873.

BY

REV. R. CAMPBELL, M.A.

Price 15 Cents.

MONTREAL:
PRINTED BY MITCHELL & WILSON, 192 ST. PETER STREET.
1874.

JAMES JOHNSTON

VS.

THE MINISTER AND TRUSTEES OF ST. ANDREW'S CHURCH:

The Ecclesiastical Bearings of the Case.

BEING

A REVIEW OF THE JUDGMENT

RENDERED THEREON BY HIS HONOR, MR. JUSTICE JOHNSON, 30TH DECEMBER, 1873.

BY

REV. R. CAMPBELL, M.A.

MONTREAL:
PRINTED BY MITCHELL & WILSON, 192 ST. PETER STREET.
1873.

1874
(44)

JAMES JOHNSTON

vs.

THE MINISTER AND TRUSTEES OF ST. ANDREW'S CHURCH:

The Ecclesiastical bearings of the Case.

The Judgment rendered by His Honor, Mr. Justice Johnson, in this case, on the 30th December, 1873, involves somewhat serious consequences I do not mean the consequences to Mr. James Johnston personally, although to him they must be very serious indeed; but, if the judgment is to stand, and be made a precedent of, to the members of every Church in Canada. As a humble layman, so far as the profession of law is concerned, I could not presume to criticize the conclusions arrived at by the learned Judge who presided at the trial, while he confines himself to expounding the principles of the civil law, or to weighing the evidence adduced by the *Plaintiff* and *Defendants* respectively. It is his office to do this, and I bow respectfully to his decision. If he is satisfied that Mr. Johnston held no verbal lease from the Trustees of St. Andrew's Church, and that the receipts put into court had the legal force of a written lease, and that the whole case hung upon these points, then he had probably no alternative but to render the judgment he did. On the purely technical points involved in the decision, I do not feel myself competent to form an opinion, but one does not need to be learned in the law to be able to judge for himself whether the whole case hung upon this point or not. I

humbly submit that there were other elements to be taken into account in order to come to an equitable decision in the case. I indeed agree with His Honor, that there was not in reality more than one question before the Court, viz.: "Had the Defendants a right to do as they did?" But before a sufficient answer can be obtained to this question, it appears to me that something more must be done than determine the exact legal value of the receipts held by Mr. Johnston. It is, perhaps, not to be wondered at that Judge Johnson should have been reluctant to enter upon a consideration of the ecclesiastical complications involved in the case, and which, as I believe and hope to show before I have done, were unwisely and unwarrantably dragged before the Court by the Counsel for the defence. He is, in my humble judgment, much to be commended for having ignored as irrelevant to the case, the vast amount of evidence led by the Defendants' Counsel, bearing upon the character and conduct of the Plaintiff. But while His Honor was justified in disregarding their plea of justification, how comes it that he did not take into consideration *the nature of the trust* held by the Defendants and overlooked the fundamental question, *for whom do they as trustees act?* I notice that he is reported in one place as putting the case thus: "They once let him a pew in *their* church." The *italics* are mine. In this sentence we find the groundwork of the judgment rendered, a judgment which must have been a surprise to many as it certainly was to me. But this *premise* is fallacious. The Church is NOT *their* church. It is as much Mr. Johnston's as theirs. His Honor seems unaccountably to have overlooked the difference between this trust and an ordinary one. It is not as if they represented property or interests alien to Mr. Johnston, to which he bore no relation until *they* put him into that relation. On the contrary, they were elected to the office of Trustee by Mr. Johnston himself, among others, to look after *his* interests as well as their own, and it might, as well as not,

have happened that he himself should have been chosen a Trustee. But it will serve to throw still further light upon this fundamental point, to say a word or two on the nature of the duties pertaining to the office of Trustee, in the Churches, connected with the Church of Scotland, in Canada There are usually two separate bodies in every congregation, the Trustees and Managers. The function of the former is to hold the church property in trust for a specific purpose, namely, for the maintenance of the worship of God according to the doctrines and practice of the Church of Scotland. When a Trustee is elected, it is for life, unless he becomes disqualified, or chooses to resign. But in the absence of corporate powers, Trustees who hold property for congregations have only a life estate in it, and there is consequently risk always of the trust lapsing, owing to the formalities to be gone through in electing successors, in case of the death, removal or disqualification of Trustees. Several congregations feeling the inconvenience of this, and desirous of having greater facilities for the acquisition and disposal of property, have applied for and obtained corporate powers: St. Andrew's Church, Montreal, among others. But for 41 years, from 1806 to 1847, that church was, I presume, on the same footing as the majority of the churches in Ontario and Quebec. Besides the Trustees, however, whose sole function ordinarily is to hold the church property, there is in most churches, and in every church organized since 1847 there *must* be, in terms of the Model Constitution imposed by the Synod on all new congregations, a distinct body whose business is to manage the financial affairs of the congregation year after year. They are called the Managers and are elected annually. *They* are representatives of the *congregation* worshipping in the church for the time being: the Trustees are representatives of the *church at large*, the religious body to which it belongs, and are bound to hold the property for the maintenance of the views of that body alone, unless that body, through its

church courts, sanctions the use of it by the representatives of any other religious denomination. It is important to notice the distinction ordinarily obtaining between Trustees and Managers, as it has a bearing upon the merits of the case before us. By the Act incorporating St. Andrew's Church in this city, these separate functions are united in the Trustees of the Church, who are also constituted an elective body. One of the reasons set forth in the preamble, for asking a legislative charter, was "the inconvenience resulting from the want of a corporate capacity in them, the said Trustees, to enforce by legal process the payment of the rents payable by the holders of pews in the said church." The promoters of the Bill did not ask for any *new* powers to be vested in the Trustees or Managers, or additional to those they were before accustomed to wield, but only authority to invoke the courts of law to give effect to their old powers. Interpreted in the light of the history of St. Andrew's Church, it is clear that the same principles were to govern the administration of the affairs of the congregation that existed prior to the act of Incorporation, and that are in force still in the majority of the congregations connected with the Church of Scotland, in Canada.

Now, to apply what has been urged above to the matter in hand, whether we view the Trustees of St. Andrew's Church in their capacity of representatives of the *whole* Church of Scotland in Canada, or in that of representatives of the *Congregation worshipping in it*, at the time when they refused to let a pew to Mr. Johnston, their conduct cannot, in my opinion, be justified as equitable. The very first clause of the Act of Incorporation explicitly states for whose use the Church property exists—"*the Church for the Public Worship and exercise of the religion of the Church of Scotland in the City of Montreal.*" In the wider sense, as representing the whole Church, they are bound to grant the use of the building to every adherent of the Church of Scotland in Montreal—not for the families or

individuals at present attending, *as* families or individuals, but only because they declare their adhesion to the Presbyterian Church of Canada in connection with the Church of Scotland—and Mr. Johnston, being among the number of those adherents, could claim accommodation at their hands even though he had no previous connection with the congregation, unless they could show that there was no such accommodation at their command. If this be not conceded, I cannot see how the Trustees could be prevented, during the three years of their continuance in office, from excluding every adherent of the Church of Scotland in Montreal from the Church, if they had any motive for doing so; and then what would become of the Act of Incorporation? But when the Trustees are regarded as acting in the other capacity, as representatives of those worshipping in the Church for the time being, their treatment of Mr. Johnston is still less justifiable. They are nothing more than the managers of a joint-stock company or partnership, Mr. Johnston being a partner or stockholder. They represent him as well as the other partners, and it is only as a matter of convenience that *they* are invested with high legal powers, and not because they have greater rights in the premises than Mr. Johnston. It is not until Mr. Johnston ceases to be a partner, or, to drop the figure, withdraws his name from the communion roll of St. Andrew's Church, or refuses to comply with the general conditions of the trust, that his rights cease. They cannot drive him out of the partnership, without his consent, unless he has violated the conditions of that partnership, which he is not accused in this case of doing.

Evidence was led by the defence to show that it is no uncommon thing in congregations connected with the Church of Scotland, to abolish pew-rents altogether, and so to annihilate all rights of pewholders. But the conclusion sought to be drawn from this, that therefore it was no unusual stretch of prerogative for the Trustees of St. Andrew's Church to refuse a pew to a member of the Church in good

standing, is a *non sequitur*. No Trustees or Managers of any church ever did, or ever could, abolish the pew system, where it previously existed, without the consent of the congregation. And who doubts that the pew system in St. Andrew's Church might be abolished, if the congregation agreed to it, Mr. Johnston among the rest? But what I should like to know is whether in the case of a congregation adopting some other mode of obtaining a revenue than by giving a right of property in pews for a certain sum, any *one* person whose rights were equal to the other members of the Church, could be singled out for *different* treatment from the rest That is the parallel which we want. But it will be vain to seek it. It really is not a question of the right in *any given pew*, at all, which is at issue, but the right of accommodation, like other worshippers, in the Church. The pews might all be cleared out of St. Andrew's Church, and the people be obliged to accommodate themselves with stools, if they wished to sit during Divine service, as is the case in many continental churches; and the question would be, could the Trustees prevent Mr. Johnston from taking his stool with him to church and occupying such a position of advantage as he might be able to elbow his way to? As it is, the pews cover the whole floor of the church, except the aisles, and unless he got a pew to sit in he could not have a seat in the edifice at all, if he did not bring a stool into one of the aisles at the risk of being knocked down and trampled upon by those entering or leaving the church. It was also attempted to be shown that other persons besides Mr. Johnston have been removed by the Trustees of St. Andrew's Church from the pews they occupied. . But here again there is no parallel. It was always by arrangement with the parties, and because the financial interests of the trust demanded it, that it was done, and they were accommodated with seats *elsewhere* in the Church. And, doubtless, if the Trustees had gone to Mr. Johnston and said, "we cannot give you *this* pew which you occupy, for an-

other year, because we can let it to greater advantage to some other person, who will pay for it more than you are willing to pay—but at the same time we will find you a pew elsewhere, so situated that the sum you can afford to pay will be an adequate rent," Mr. Johnston would have felt the request to be reasonable, and would have complied with it at once. But the letter of the Trustees shows that they not only declined to give Mr. Johnston possession of the same pew that he had occupied before, but to rent him *any* pew.

If, then, the Trustees have the right to do as they did, that right does not arise out of the nature of their trust, and unless there is something in the Constitution and By-Laws of the congregation specially claiming this right for them, in opposition to both common sense and equity, I fear it will be long before we can point in any other quarter to either law or precedent for their action. The Act of Incorporation confers upon the Trustees the power of making By-Laws, under certain limitations, one of these being that such By-Laws or Regulations "shall not be contrary to the Constitution of the Church of Scotland." By-Laws were afterwards framed, and the first section of Article XVIII of these By-Laws reads thus: "This Church shall be under the jurisdiction of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland." We look in vain in the By-Laws for any special right claimed by the Trustees to disfranchise a member of the Church who pays his dues, and conforms to the requirements of the trust. The fact is, no body of men in framing By-Laws would be so foolish as to conspire against their own rights in constructing them; and I venture to say that until a crisis arose in their Church, which seemed to them to demand a stretch of their perogative, the present Trustees never entertained the claim which they now put forth, of being able to take pews from one set of men and give them to others, at their own option. There being, therefore, no specific authority in

the Constitution and By-Laws for the course pursued by the Trustees, we are obliged, in terms of the Act of Incorporation, to consult the *constitution of the Church of Scotland* on the point at issue, and to see what the regulations and practice of the Presbyterian Church of Canada in connection with the Church of Scotland, under the ecclesiastical jurisdiction of which the St. Andrew's congregation lies, have to say on the question before us. His Honor, Mr. Justice Johnson, says in his judgment as reported: "We must not confound a voluntary organization like this one, exercising corporate powers, under certain regulations, with the Church in Scotland, from which it sprung. We have not imported the Scottish Parish Church and all its usages here. It is because we *had not got these things* that we were obliged to shift for ourselves and get incorporated, and agree among ourselves how we should be governed," &c. I would refer His Honor to the Act of Incorporation itself for a correction of the opinion expressed in these three sentences. Answering the last of them first, I beg to say that it was *not* questions of government that led to the Act of Incorporation,—the Preamble does not say so, but it and the By-Laws, which *specify* nothing about government, clearly show that it was only for *financial* purposes, for creating easily moved machinery for managing the property and revenues of the Church, that corporate powers were sought. As to the two first sentences I have quoted, it is enough to state the fact that the Act of Incorporation specially prohibits the Trustees from framing regulations "contrary to the constitution of the Church of Scotland," to show that the learned Judge is astray on this point. The very Charter, under which the Trustees claim the extraordinary powers they have exercised in this case, "imports" "the usages" "of the Scottish Parish Church." And the Trustees give effect to this clause of the Act of Incorporation in the stipulations of Articles I and XVIII of the By-Laws, which provide that the government of

the Church shall be regulated by the "usages" of the Church of Scotland, and that the Synod in Canada shall see that these usages are complied with.

Judge Johnson more than once employs the word "voluntary" to describe religious organizations that are separate from the State, and in such a way as to lead to the impression that he believes that *they* are less bound to adhere to their laws than Established Churches are. He cites an American Jurist as his authority for saying that the Civil "Courts will not interfere with the determination of the majority of the body of which the complaining party is a voluntary member, except in certain strictly defined cases of disposal or misappropriation of property in trust; and it is only when civil rights as to property are involved that the secular tribunals will examine so far as to see that the fundamental rules of law have been observed." It is, perhaps, not to be expected that a Canadian Judge, however well skilled in Canadian and English law, should be familiar with Scottish law and precedents. But I can furnish him with both law and precedent to show him that, at least in Scotland, the interference of the Civil Courts *can* be invoked in other cases than those he mentions—by the members of *non-established* churches. On the 19th July, 1861. in the First Division of the Court of Session, judgment was given in a case that attracted a great deal of attention in Scotland, the celebrated CARDROSS CASE. The facts were briefly these: the Rev. John McMillan, a minister of the Free Church of Scotland, was deposed from the office of the ministry—he alleged *irregularly*—by the General Assembly, the highest ecclesiastical court of that church. Holding that he had not been condemned according to the constitutional practice of the church, and there being no higher church court to which he could carry the case by appeal, he entered an action of damages against the Free General Assembly in the Civil Court. The case was first tried before Lord Ordinary Jerviswoode. The pleas set up by the Free Church

authorities in defence, covered substantially the ground taken by Judge Johnson, that they being a voluntary association, any one who was not satisfied with their action was at perfect liberty to withdraw from their communion, and that they were not amenable to the Civil Courts for the manner in which they administered their laws. The Lord Ordinary's *interlocutor* repelled these preliminary pleas, and held that if Mr. McMillan could prove his allegations, he would be entitled to the interposition of the Civil Courts to secure him in the recovery of the amount of damage he had suffered from the alleged illegal action of the Assembly. The church authorities brought the case in appeal before the highest Civil Court in Scotland, the First Division of the Court of Session, and I quote below from the reported unanimous deliverance of the Court, confirming the judgment of Lord Jerviswoode, declaring that voluntary associations are bound to adhere to their own laws, and that if any adherent of such association can show that he has suffered injury from the violation of its own laws, on the part of that association, he can recover damages in a Civil Court. Lord President McNeill (now a Peer, Baron Colonsay, a member of the Judicial Committee of the Privy Council, to whom it is understood all Scotch cases in appeal before the Privy Council are referred,) pronounced the judgment of the Court, from the report of which I make the following extracts: "The question arises out of the proceedings of a voluntary association—a numerous body, certainly, of Christians—associated for purposes of religion—forming a society called, and perhaps not improperly, a church, though we could get no accurate definition of that word; and it is a body of professed Christians, tolerated by law and enjoying the protection of the law in the expression and promulgation of their religious opinions and doctrines, and in the performance and exercise of their religious rights. That body has a constitution and rules by which the society is governed, and to which its members have voluntarily

subjected themselves; and, in so far as they have subjected themselves to these rules and to that constitution, the State or the Civil Courts will not hold that they are entitled to complain when these rules are *observed*, unless there is something in them contrary to the public law of the land." . . . "The pursuer avers that according to the constitution and rules of that association—the General Assembly—which is the body possessing the greatest power according to the rules of that association—the General Assembly, in pronouncing the sentence in question, exceeded its powers and violated the constitution and rules under which he placed himself and had been received into the association; and that by so doing they subjected him necessarily to loss of emolument, and also subjected him to injury as regards his character and feelings." . . . "It is plain that, until the facts are investigated, we cannot know whether the constitution and rules of the association have been violated or not, whether the terms of the contract have or have not been broken, by the defenders, to the injury of the pursuer. *I cannot assent to the proposition which has been contended for on the part of the defenders, that, whatever may have been the constitution and rules of this association, and however flagrantly violated by the Assembly, no redress can be made in the Civil Courts. I think that for injury done by gross violation of the contract, redress may be given, and in the form in which it is asked, that is to say in the form of damages.*" The case on its merits was never finally disposed of, I believe, some sort of compromise having been effected between the parties to the suit, but this judgment on the preliminary issues still stands. From the principles laid down in this decision, in the part of the quotation which I have italicized, it would appear that Mr. Johnston could summon even the Session, Presbytery, or Synod before the Civil Courts, if he contended that he had sustained injury by their violating their own laws—much more the Trustees, who have had a legal status conferred upon them by Parlia-

ment for the very purpose of suing or being sued. The Civil Court had a right to inquire into all the acts and motives of the Trustees in the premises, and to examine the laws of the church which bore upon the question at issue—indeed, without doing so, it was impossible to dispose of the case satisfactorily. I presume Scotch precedents would govern the case before the Supreme Court of the realm, the Privy Council, inasmuch as it is in Scotland that the machinery of Presbyterian churches is best understood, and, especially, inasmuch as the charter of St. Andrew's Church is limited *by the constitution of the Church of Scotland.*

The learned Judge, commenting upon the evidence led by Mr. Johnston's Counsel to show that the Defendants had acted contrary to the constitutional practice of the Church, is reported to have said : " The Plaintiff is therefore driven to rest his case upon the law and usage of the Church, and in this attempt I think he has completely failed." I do not know what *all* the evidence before His Honor on this point was, but I heard part of it. Dr. Campbell testified, as one of the oldest members of the Church, that it was an understood thing that persons occupying pews in the Church, and paying the dues regularly, should be continued in the same pews, unless they desired to change them—that this was the practice in St. Andrew's Church until this case arose, he knew both as a pew-holder and a Trustee. I am not aware that this testimony as to usage in this particular congregation, was contradicted by any subsequent witness. I know that one other witness, who claimed to have some knowledge of the law and practice of other congregations, declared that he had never heard of such an arbitary exercise of power on the part of Trustees as in the present case, and that he believed it unparalleled. I am prepared to maintain that the records of every Presbyterian Church in Christendom will be ransacked in vain, to find a precedent for the action of the Trustees. I regard it as a most

high-handed procedure, contrary to the whole genius of our ecclesiastical system, as well as to express laws, that the *mere financial* or *temporal agents* of a Church should arrogate to themselves the power to exclude any member of the Church from a participation in Christian ordinances, much less a high spiritual office-bearer of the Church, which Mr. Johnston at the time was,—as they virtually did by refusing to let him a pew. It is a mere quibble to say that this refusal did not necessarily drive Mr. Johnston from the Church. It is amazing that, as matter of fact, it had not that effect; but that it was designed to accomplish that result cannot be questioned. The letter from the Trustees makes this plain. Besides, Dr. Campbell, with admirable candor, acknowledged that it was because of the alleged annoyance to which the minister of the Church was subjected in the Session by Mr. Johnston's presence in it, that he as a Trustee was led to advise the course which was pursued towards Mr. Johnston, in the expectation of ridding the Session of him. I am sure that that gentleman, and the other gentlemen of sense and shrewdness associated with him in the trust, never thought of the far-reaching consequences—the blow struck at the rights of members and at the liberties of the spiritual courts, involved in their act, or they could never have been persuaded to be instrumental in giving so terrible a wrench to the constitution of the Church. For, even though the power to do as they did, lay obviously in their hands, the inexpediency of exercising it, and the serious strain that would be laid upon the whole machinery of the Church, ought surely to have occurred to them. I cannot believe that they would have lent themselves to outraging consciously the inalienable rights of any man, had they foreseen the full bearings of their act. It may be that the Trustees who were in office at the time, when this outrage was perpetrated, are *proprietors* of pews, and therefore may regard themselves as safe from being treated in the same manner at some future time; but what se-

curity has any person in the congregation, other than proprietors of pews, that he can continue a member of the Church, if the Trustees at their own option have it in their power to close out not only a member of the Church, but their own ecclesiastical superior, an elder, to whom, in virtue of his office, they owe respect and obedience? Nay, if they can shut the pews against elders, what security has the minister that they shall not shut the pulpit against him? It might be thought that the fact of the minister's being *ex officio* a member of the Board of Trustees secures him against any violation of his rights, but I suppose he can be overruled by a majority of the Trustees. And if it be urged that a minister can be shut out of a Church only by the action of ecclesiastical courts, I answer that an elder cannot be deprived of his status either, except by the spiritual courts. And if it be said that Article XVII. of the By-Laws, which places the custody of the keys of the Church in the Minister's hands, is a further security for the Minister against being excluded, the very same article, a few words further on, shews that during a vacancy or the absence of the Minister, it might have fallen to the lot of Mr. Johnston, as a member of the Kirk-Session, to take charge of the keys. Yet in spite of the apparent security which this article gave him against being hindered in the discharge of his spiritual duties, the result was that the Trustees thought to ride roughshod over him. I have argued the last point, on the supposition that the Trustees acted arbitrarily, and *without reasons assigned.* To have done so would have been bad enough, we have seen, for if they could shut out *one* elder they could shut them *all* out—but the case becomes greatly aggravated when they assign as a reason for their action, Mr. Johnston's *conduct.* The moment they take it upon them to judge of conduct and character, they usurp the functions that belong to the Church courts alone.

I have already remarked that Mr. Justice Johnson ex-

ercised a wise discrimination in taking no notice of the evidence in disparagement of Mr. Johnston's character led by the Defendants in justification of their action towards him. But although he made no apparent use of this mass of evidence, it was published in the city press, and designed to convey the impression that Mr. Johnston was so intolerably bad a man that he was unfit to be associated with Christian people. Moreover, if the Judge did not take cognizance of the attempt to justify themselves on the part of the Defendants, for dealing as they did with the Plaintiff, their offence against ecclesiastical order and decency is none the less on that account. It is at this point that the case begins specially to concern the Church Courts. I may say for myself that I had little or no interest in the suit until I heard Dr Campbell avow that it was because of Mr. Johnston's conduct in the Session, and at a public meeting of the Congregation, that the Trustees took the course they did. I had before that protested to the Counsel for the Plaintiff, against being singled out from the Clergy of the Presbytery to give evidence in the case, as I did not wish to be mingled up with the matter. I fancied that the Defendants would rest their case upon the Act of Incorporation and By-Laws, and contend that they were empowered by these to act as they did. Had they confined their defence to this ground, or to the ground His Honor occupied in his judgment, I should not have cared very much about the case, as it would then at most affect St. Andrew's Congregation alone; and although it might entail disagreeable consequences upon them, yet, if they were satisfied with leaving their spiritual rights at the mercy of their Trustees, no one else need be concerned much about it. But as soon as I perceived that the Trustees, in their defence were determined to pour contempt upon the spiritual courts to which they owed obedience, by raking up matters that had been settled in the Presbytery and Synod, I felt that the case was no longer *James Johnston*

vs. The Minister and Trustees of St. Andrew's Church, but it was *the ecclesiastical Courts* against the *financial Managers* of the Congregation. I confess that from that moment I was no longer an apathetic spectator, having no special interest in the case. I felt that I should be utterly wanting in duty to the constitution of the Church of which I have the honor to be a Minister, if I did not do all in my power to subvert legitimately the pretensions of the Defendants. When I was ordained to the ministry I took the following oath of office: "that if any encroachment on the supreme power and authority (that of the Synod in spiritual matters) shall be attempted or threatened, by any *person* or *persons*, court or courts whatsoever, then the Synod, and *each* and *every member* thereof, shall, to the utmost of their power, resist and oppose the same." As the Trustees set themselves against the Church courts, I could not in view of the foregoing declaration, look on indifferently. The Trustees arrogated to themselves the power of judging Mr. Johnston, and coming to conclusions adverse to him; they determined that he should no longer rule over them as an elder, and to make sure of this they would no longer afford him sitting room in the Church. Now, the constitution of the Church of Scotland, both in Scotland and in Canada, provides that there is only one way in which an elder can be dealt with if he misconducts himself. He is to be formally charged and tried by his peers in the Session alone, or the matter is, by consent of parties, referred to the court next higher, the Presbytery. He takes rank above the rest of the congregation, and above the Trustees; and for either the temporal authorities of the Church, or the congregation at large, to assume the right to pronounce upon his conduct, is a gross irregularity. Now, at the time when the Trustees informed Mr. Johnston that they would not let him a pew in the Church, he was a member of the Kirk-Session in good standing, and continued to be so for some time afterwards. He got the notice from them on 7th December, 1872, and we find him still

receiving calls to attend meetings of Session up to 23rd January, 1873. It is clear, then, that the action of the Trustees was meant to coerce Mr. Johnston in his course as a member of Session. The letter he received from Mr. Wardlow on the 7th December, and the testimony of Dr. Campbell, make this manifest. The latter concluded his straightforward evidence by acknowledging that the Trustees in an interview with Mr. Johnston, after the action complained of, offered to continue him in the possession of his pew, *provided he would resign his seat in the Session.* If this was not an attempt on the part of the temporal authorities of the Church to override the spiritual, I do not know how the action can be designated. What the proper functions of the *Trustees* are we find laid down in the Constitution and By-Laws of the Church—they are confined purely to managing the finances and guarding the property. Here is how the law of the Church defines the functions of *the Session*: "The business of a Session is to regulate all matters relating to the worship of God, and the spiritual government of the congregation; in particular, to take an oversight of the members in respect of their walk and conversation, and to care for the religious instruction of the young and the ignorant; to admit and disjoin communicants; to grant certificates of membership, to exercise discipline, &c." I quote from the Book of Polity of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, under the jurisdiction of which the St. Andrew's Church lies: the Polity of the Parent Church of Scotland uses words almost identical. From which it is manifest that the Trustees in this case have traversed the duties properly appertaining to the Session, in taking cognizance of conduct. During my own examination as a witness at this trial, I was asked whose duty it would be to take charge of any person present at a service in the Church who behaved in a disorderly manner. I replied that the assistance of the police could be invoked. When further asked whose proper

business it was to invoke that aid, I said that I did not know, but that I supposed it would be as much the duty of the Session as of the Trustees. Of course, a minister with reference to ecclesiastical laws is situated like an advocate with reference to civil laws: he is familiar only with those points that have occurred in his practice. Now, this was a point that had never been raised in my experience or observation. As soon as I went home, however, and consulted authorities on the subject, I easily satisfied myself that it would be the business of the *Session alone* to see to the suppression of unruly conduct in the Church. The passage I have quoted from the polity of the Church invests them with the duty of *regulating all matters relating to the worship of God.* And that it is the Kirk-Session who are responsible for the right ordering of affairs in the Church, and not the Trustees, is manifest from the fact that with them, and not with the Trustees, lies the custody of the keys of the Church, both by a general resolution of the Synod and by By-Law XVII. of St. Andrew's Church. In the case of disturbance, as supposed by the Judge, it would be the duty of the Kirk-session to interfere, and this they would do by their church officer, "who," we are informed in Cook's Styles, "carries out the orders of the Session, and executes its summonses." His Honor, who seemed to attach importance to this point, had his attention directed to it subsequently in the address of the Counsel for the Plaintiff.

I believe I have now touched on all the material points bearing on the merits of this case, and I think the conclusion logically arrived at is that when the nature of the trust is taken into account, and when the Act of Incorporation and By-Laws of St. Andrew's Church are interpreted in the light of the past history of the Congregation, and of the constitution of the Church of Scotland, specially cited in the Charter, as well as of the regulations of our own Church in Canada, the Trustees have utterly transcended their powers, and have acted in a very high-handed manner towards Mr. Johnston.

Here my task ought to terminate. But the worst has yet to be told as to the treatment of both Mr. Johnston and the Church courts by the Defendants. To the following *resumé* of facts I do not think exception will be taken. *First.* An elder in our Church is appointed *ad vitam aut culpam.* He is "in orders," to use an English Church phrase, as well as the Minister, and his orders are equally "indelible." His duties consist in advising with the Minister, in aiding him to govern the congregation, and in taking part in all the work that belongs to the Session. He has an equal voice with the Minister in the Session, the only superiority which the latter has lying in his being the only qualified *Moderator* or Chairman of the Session. Indeed, the Moderator's duties do not lead him to vote except when there is a tie between the other elders. His business is to *moderate*, to guide the discussion, to decide impartially between the other members of Session, when a difference of opinion exists,—but his very position and title preclude him from identifying himself with a party in the Session. *Secondly*, Mr. Johnston was chosen and ordained as an elder in St. Andrew's Church, and it may be presumed he was thought specially qualified for the office or he would not have been selected out of the large congregation worshipping there. It is now said that he was specially *un*fit for that office, on account of infirmities of temper and obstinacy of opinions. But that was a point that should have been settled before he was put into office. He was no stranger in Montreal at that time. He had long occupied a prominent position as a merchant in the city, and was perfectly known in ecclesiastical circles, both for his zeal in aiding the enterprizes of the Church at large, and for the tenacity with which he held his opinions on church matters. Indeed, he probably would never have been identified with St. Andrew's congregation, had it not been for this characteristic. Yet, with this record well known, he was created an elder of St. Andrew's Church. It having seemed good

to that congregation to take this step, no one else had any right to interfere; but it is with a congregation in choosing an elder, as it is with a man in choosing his wife—it is a serious business—it is an engagement for life. A man can take to himself a wife, but he cannot, anywhere else at least than in the neighbourhood of Chicago, put her away at his own option, merely for "incompatibility of temper." The Civil Courts alone can dissolve their union, unless they choose to live apart, and that only for the most serious crimes. It is precisely a parallel condition of things that we find in the case before us. Once a Session invites a man to join them, and invests him with the character of an elder, they cannot thrust him out contrary to his will, because he can crave the protection of the higher courts; and these courts do not allow elders to have their orders taken from them except for the most serious causes. *Thirdly*, Mr. Johnston discharged the duties of an elder to the apparent satisfaction of the other members of the Session for a considerable time after his ordination. At length, however, an issue arose in the Session on which he differed with several of the elders, and on which he, an old man, naturally conservative, felt strongly. *Fourthly*, The result was not only a collision with certain other members of the Session, in which, however, he did not stand alone, as he was sustained by a considerable portion of the members, but also with his minister, whom he accused of casting in his influence with the party to whose views he (Mr. Johnston) was opposed. He addressed a printed circular to the congregation in which he gave expression to his views in a plain, blunt way, using uncourtly language, and throwing out insinuations against his minister that were certainly offensive. For this very unwise and irregular procedure he was suspended from his office of elder for six months by the Session, the other members, not unnaturally, being indignant with him for taking such questionable means to make his views prevail, and especially desirous of shield-

ing their recently settled and popular minister from the attack they thought Mr. Johnston had made upon him. Against this action of the Session Mr. Johnston appealed to the Presbytery, in which the judgment of the Session was sustained by the casting vote of the Moderator. The case was further taken by appeal to the Synod, on two grounds mainly, that the Session had not proceeded against Mr. Johnston as the forms of law demanded. and that even had they done so, and were all true that was charged against Mr. Johnston, it would not constitute so great an offence as to warrant their suspending him from his office. The Synod without discussion, unanimously came to a finding substantially vindicating the character of Mr. Johnston, and confirming him in his eldership; and this decision was acquiesced in by the Session. Here, according to all law and order, the matter took end. I have acknowledged that even voluntary ecclesiastical courts can be held to account before the civil courts, for their deliverances, when these injuriously affect those against whom they are pronounced, but this can never be done afterwards, unless the parties cause their dissent to be recorded at the time, which was not done in this case —neither was the Synod cited to appear before the Superior Court in Montreal—and therefore I hold that it was highly contumacious, and argued supreme contempt for the Synod, whose jurisdiction their own By-Laws compel them to acknowledge, for them to drag this matter before the Civil Court, or to refer in any way to what was finally disposed of. That is count Number One.

Here is another circle of facts:

1. For several months after the settlement of the case before the Synod, all was going quietly in the Session, when a new issue arose about St. John's (French) Church. Mr. Johnston in the Session opposed the majority of the members, who proposed to apply to the Presbytery for leave to occupy St. John's Church, as a territorial Mission Church. At a meeting held in the Church on the 4th

November, 1872, the proposal of the majority of the Session was approved of by the congregation then assembled, Mr. Johnston alone dissenting. At this meeting an unpleasant scene took place, Mr. Johnston, irritated, as he alleges, by an accusation brought against him, which he declares to be false, became excited, and seemed to contradict the minister who occupied the chair, and conducted himself in such a manner as alienated from him some of those in the congregation who had hitherto been favorably disposed towards his views, resulting in a unanimous request on the part of those present that he should withdraw from the Session.

2. The Presbytery the next day declined to entertain the proposals of the St. Andrew's Kirk-Session and congregation, on the ground that St. John's Church was not at the disposal of the Presbytery; and thus the views of Mr. Johnston on this question prevailed over those of the rest of the Session and the entire congregation. Yet notwithstanding that the result of this difference of opinion between him and the Session and congregation was to create new trouble in the Session, he continued to attend the meetings of Session and to receive notice of them up to 23rd January, 1873.

3. Meanwhile a correspondence was carried on between the Minister of St. Andrew's Church and Mr. Johnston, with the view of procuring the retirement of the latter from the Session. Mr. Johnston failing to respond to the call of the congregation and the solicitations of the minister, refusing to withdraw from the Session under compulsion, and asking that specific charges should be laid against him and that he should have a fair trial, on the 7th December received from the secretary to the trustees a copy of the following resolution—that document which gave rise to the present action—

"Montreal, Dec. 7th, 1872.

"That in order to sustain the action of the congregation, taken in regard to Mr. James Johnston at its meeting on

the evening of the 4th Nov. last, the trustees do now decline to let a pew to Mr. James Johnston for the ensuing year—carried, A. Buntin dissenting."

Notwithstanding this notice, Mr. Johnston still attended the meetings of the Session, and at this time there seems to have been no disposition to proceed against him ecclesiastically, for any alleged unruly conduct at the congregational meeting on the 4th November.

4. Meanwhile, a new complication arose: Mr. Johnston instituted an action before the civil court for damages against a member of the Session, for alleged defamation of character by an accusation, which he maintained was false, made against him at the meeting on the 4th Nov.

5. And it is very suggestive that it was soon after this action was instituted, but some time after the declared offence was committed, that Mr. Johnston was formally arraigned before the Session for having behaved scandalously towards his minister and the whole congregation on the 4th Nov., and not pleading before them, on the untenable ground that he could not expect justice at their hands, the Session found him guilty and passed sentence of deposition upon him.

6. He appealed to the Presbytery from this sentence, and while the appeal was being prosecuted before the Presbytery, and a member was speaking to a motion proposing to reduce the sentence of deposition and order a a new trial, the representatives of the Session offered to withdraw their sentence and restore Mr. Johnston to his status as an elder, provided he would retire from the Session when thus restored. By consent of Presbytery this was done. Mr. Johnston's appeal was fallen from, the sentence of deposition was recalled, and Mr. Johnston handed in his resignation. Subsequently the Session accepted his resignation.

7. The law of the Church is that when a suit is abandoned all the evidence led regarding it ceases to be evidence, or to be of any value, and so is destroyed. Here

is the text of the Church's law: "Minutes of the whole proceedings shall be regularly kept by the Clerk of the Court, but shall not be entered on the permanent records until the trial has been completed. If the accused is acquitted, these minutes shall be then destroyed; and the only record entered shall be a statement that such charge had been made, and that the party had been acquitted" This trial was *never* completed inasmuch as the deliverance of the Session was immediately appealed from, and therefore the law quoted above was the law by which the Session of St. Andrew's Church were bound to regulate their subsequent procedure. They were under obligations to see that everything relating to the trial of Mr. Johnston was destroyed. But to make sure that nothing should remain on the records of the Session, prejudicial to him in this matter, Mr. Johnston stipulated with the Committee of Presbytery that conferred with him regarding his resignation of the eldership in St. Andrew's Church, that he would not resign unless he was assured that these minutes should be destroyed. The Committee assured him that this would follow as a necessary consequence from the withdrawal of the sentence and charge of the Session, and that they would see to it that the Presbytery should give the necessary instructions to the Kirk-Session anent the deleting of the minutes. The Presbytery acted on the Committee's suggestion; and the Minister of St. Andrew's Church, and the elder representing the Session in the Presbytery, seemed to undertake with alacrity and thanfulness, that this deleting would be duly attended to. And yet, will it be believed, that these minutes that now *have no legal existence*, have been made use of by the Defendants in the present suit? Incredible as it would appear, such has been the case. The *factum*, prepared by the Session, for resisting Mr. Johnston's appeal before the Presbytery, was amongst the papers put into Court by the Defendants! How this can be reconciled with honour, justice, and truth, I cannot understand. Why the Plain-

tiff's Counsel suffered this document to be put in as evidence, without protest, I cannot comprehend; they ought certainly to have resisted it; and had they done so, the Judge would have been obliged to inquire into the ecclesiastical regulations bearing upon the question. I trust that when the Presbytery comes to inquire whether the minutes referred to have been destroyed or not, some satisfactory explanation can be given of how these minutes came into the hands of the Defendants in this case, and that it will appear that they made use of the *factum* spoken of in opposition to the wishes of the Minister of the Church, notwithstanding that he was a party to the suit, and of the representative elder, although he was one of the counsel for the defence.* So far as the last process instituted in the Session against Mr. Johnston is concerned, it terminated in his *full acquittal*, and he is now an elder in good standing, as the Session acknowledged by accepting his resignation—although no longer an elder in that particular congregation. When the Session offered to withdraw their sentence and charge, and the Presbytery consented

---

* Since the above was in type, the Presbytery have met, and to my utter amazement the representatives of the Session have denied having given any pledge regarding the deleting of the minutes. The representative elder says that he undertook to see the sentence of deposition removed on *condition* that the rest of the Session approved of it. But that there were no conditions attached to the offer to remove the sentence is manifest from the fact that the Presbytery acted upon the offer, which they would not have done had it not amounted to an absolute undertaking. There must have been entire reliance in the good faith of the Session on the part of the Presbytery at large, and especially of the Committee of Presbytery that succeeded in getting Mr. Johnston to resign, or they would never have been parties to the transaction. And to show that the Presbytery felt that the matter was definitely settled, without conditions, they kept no minutes regarding it, which surely they would have done, if the removal of the sentence of deposition, which is another phrase for destroying all records of the trial, was conditional upon the terms of settlement being ratified by the other members of Session, And it appears they did ratify the offer of their representative, because they accepted Mr. Johnston's resignation, which was given upon the good faith of that offer. Unless we are to conclude that the whole Session justified the course taken by the Minister and representative elder, we should have to

to this course, this was the legal end of the whole question, and it was positively indecent as well as illegal afterwards to rake up matters which the Session themselves had buried. And seeing that the Minister and his representative elder may yet have to account to the Church courts for their conduct in having apparently countenanced a proceeding directly in the face of the authority of the Church, I say no more on this point.

But inasmuch as they have chosen to drag the details of Mr. Johnston's opposition at the meeting of the congregation on Monday the 4th Nov. 1872, before the public, at the late trial, as if his conduct on that occasion was of a character so damaging as to warrant the most violent proceedings against him, I claim the right to offer a few remarks upon the proceedings of that Monday night's meeting. Had the action of the Session in deposing Mr. Johnston from the eldership, on account of his conduct at that meeting, gone for review before the higher ecclesiastical caurts, I do not doubt that the judgment of the Session would have been reversed. I for one would have been

---

accuse them of being parties to a trick to secure the result, the retirement of Mr. Johnston, without sanctioning the condition made by their representative, the removal of the sentence. At all events, if the representative elder found that he could not obtain the consent of his colleagues in the Session to the arrangement which he proposed, he was bound to protest against their acting upon it, which he does not appear to have done. And more than this, he, as counsel in the case under review, suffered the minutes mentioned to be employed, which surely he could not honorably consent to, even though the Session had discarded the arrangement, since *he* at least had sanctioned it, and he knew that all which took place subsequently in the Presbytery regarding it was founded upon his offer. There being no Presbytery minute with respect to it, the Committee that conferred with Mr. Johnston cannot *prove* by any documents, although there is oral testimony enough, that the Presbytery issued its injunction to the Kirk Session to delete the minutes referred to, and that the members of the Session present undertook to see this done; but they would have to be taken for either knaves or fools, if they satisfied Mr. Johnston that they would see that a certain thing should be done, and did not exact assurance from the proper parties that it *would* be done, before they handed over to the Session the resignation which Mr. Johnston placed in their hands.

prepared to maintain that he did and said nothing at that celebrated congregational meeting that would justify so grave a sentence. Mr. Johnston behaved foolishly, no doubt, and did not show that respect to the members of the Congregation who were present that he ought to have done; but he alleges and offers testimony to prove that he was thrown into very great excitement by an accusation preferred against him, which he indignantly repelled. Any unseemly gesticulations which he indulged in might well be excused in such circumstances. But the burden of his offending on that occasion was, in the estimation of the Session, the manner in which he called in question the statements of the Minister regarding the non-distribution of the '*Presbyterian*.' I hold that in the circumstances Mr. Johnston was warranted in being confident, on his side of the question. He had taken pains to inform himself that the "*Presbyterian*" had been delivered in the building on Saturday night. He produces evidence to show that he had received assurances at the printing and express offices to the effect that the periodicals had been delivered, and this being the case he had good grounds for suspecting either neglect on the part of the Church officer in not placing them in the pews, or a designed withholding of them on the part of the Church authorities; and any reasonable person will say that he was justified in putting it again and again to the Minister if he was perfectly sure that the "*Presbyterian*" had not been delivered. As it turned out, Mr. Johnston's information proved incorrect; but the falsehood of one of his informants does not prove *him* false; and no court, civil or ecclesiastical, that was actuated only by sentiments of calm justice, would condemn a man who could offer so good an explanation of his conduct. I say nothing of the *manner* in which Mr. Johnston may have challenged the Minister's statement about the "*Presbyterian*"—it may have been offensive—but so far as the substance of the matter is concerned, the Minister was bound to regard

Mr. Johnston's explanation of his reason for being so positive, *that he had received false information*—as valid. That the alleged offence for which Mr. Johnston was deposed by the Session was not sufficient to justify them in proceeding to that sentence, notwithstanding that he committed the grave error of not attempting to defend himself by challenging the evidence taken against him, is manifest from their subsequent readiness to withdraw their sentence. Had Mr. Johnston committed a serious crime, they were in duty bound to see that he was adequately punished for that crime; and it would be like compounding a felony for them to reduce their sentence. And that the Presbytery were of the same mind as to Mr. Johnston's alleged offence is manifest from their action in allowing the Session to withdraw their sentence. And when the condition on which the Session offered to clear Mr. Johnston's character is taken into account, we are forced to the conclusion that it was not to mark their abhorrence of his crime that he was dealt with, but to get rid of his presence in the Session—and that the solemn forms of ecclesiastical procedure, meant for the punishment of heinous sins, were unwarrantably prostituted to the accomplishment of this end. The great mistake made by Mr. Johnston, was in not directly communicating with his minister and offering an explanation and apology as soon as he discovered that he had been misinformed. But it is not customary in these days to hang men for want of courtesy. This is the conclusion one must come to, even admitting all the evidence led before the Session, to show that Mr. Johnston had accused his *minister* of keeping back the "*Presbyterian*"; but I am bound to say that the evidence on that point is far from conclusive. Mr. Johnston emphatically denies having made such an accusation, and his assertion is borne out by the short-hand notes of the *expert* reporter whose services he had taken the precaution beforehand to secure. The testimony afforded by the report of this latter gentle-

man is more to be trusted for accuracy and impartiality, than the vague recollections of members of the congregation taken down two or three months after the occurrence to which they related. The only person whom Mr. Johnston says he reflected on was the church officer, and he apologized to him as soon as it was discovered that the express had not delivered the parcel: and thus Mr. Johnston made what reparation he could for the injury that he had been misled by false information into doing to the only person whom he maintains he had wronged. As to the action of the congregation in passing an opinion upon Mr. Johnston's duty in relation to the Session, I hold that that was entirely *ultra vires*, and that the minister, who was presiding on that occasion, ought not to have allowed the congregation to take so unconstitutional a step. A great deal has been made of the unanimity with which the congregation acted in asking Mr. Johnston to resign. But any minister who occupies a high place in the estimation of his people, and whose constant business it is to control popular assemblies, could easily get his congregation arrayed against an elder, especially if that elder lacked popular talents and had committed awkward blunders in their presence, as Mr. Johnston did. But it does not follow that they, guided by their minister, though unanimous, should necessarily be right, even if it were consistent with the impartiality and dignity of a chairman to incite one party in a meeting to take action against another party. It is said in justification of the coursé taken in obtaining an expression of the people's wishes, that Mr. Johnston had previously said that as he had owed his election to the people, he would only retire at the expressed wish of the people. In this Mr. Johnston was wrong. The people have the nomination of elders, but the right of selecting and ordaining elders resides in the Session only. So that Mr. Johnston being astray in his ecclesiastical law, this was no reason why the congregation should be allowed, or prompted, to arrogate to them-

selves the authority that belongs to the Church courts alone.

In conclusion, I beg to say that I am no apologist for Mr. Johnston. I am under no obligations to him, nor do I expect to be. Had I been his counsellor, and had he acted on my advice, he would certainly have taken a very different course from what he did. I see much to condemn both in what he has done and in his manner of doing it; but that does not prevent my seeking to hinder his being outlawed for the tenaciousness of his opinions and the abruptness of his speech. His very failings lean to virtue's side. If he is to be driven outside the pale of a Christian congregation because he contends persistently for what he deems the right, then the nation to which he belongs will have to be placed outside the Christian nations. That in him the national qualities are exaggerated, may be true; but every discerning mind will see in him a genuine Scot. "They used to say in the middle ages, '*Nemo Scotus sine pipere in naso*,' and now it is a proverb on the Continent, '*Fier comme Ecossois*.'" This is an extract from a letter of the celebrated Edward Irving to the late Dr. W. Anderson of Glasgow. Irving adds, "My notion is that in the commonwealth of nations the Scotch have been set to show forth the indomitableness of man under all outward assaults and oppressions from without; the adamantine resistance—the asbestos unconsumableness." We are accustomed to laud our ancestors for the steadfastness and valour with which they contended for their Christian liberties; and that cannot surely be a crime in one of their descendants which was a virtue in them. Mr. Johnston has hitherto been a proved friend and benefactor of the church of his fathers, and, in my estimation, it argues more than obstinacy on his part, namely, loyal attachment to the principles of that Church, in an age and city that cannot count many martyrs to principle, that he still adheres to it. I can easily conceive that many of those who condemn him for

his tenacity of purpose, would flee to any other church, even to that of the Gesu, rather than submit to the harsh treatment to which, I believe, he has been subjected. Some may think I have made too much of mere ecclesiastical irregularity in this review. They may be inclined to the belief that substantial justice has been done in the premises, even though the laws of the church were trampled upon. Those who take this view are probably of opinion that ecclesiastical regulations are only useless forms, and that it is of little consequence to the interests of religion whether they are observed or not. But such persons need to be told that these regulations are not of an ideal or arbitrary kind merely, imposed as a Utopian scheme, without reference to the need and advantage of those to whom they apply. They are rather the product of experience, and have been formed to meet the need of cases as they have arisen from time to time in the past history of the Church; and in preserving them consists the only guarantee for the rights and liberties of all parties connected with the Church. Even though Mr. Johnston were the worst man in the community, and it were not possible to shake him off from the congregation by regular process, it would be perilous to sanction irregularity; for that irregularity might be employed the next time against a more deserving person.

I have studiously avoided personal references in this discussion. Any other name might be substituted for that of Mr. Johnston (except in the last paragraph), any other minister, session and trustees for those of St. Andrew's Church. It is a question *in thesi*, so far as I am concerned, no matter what ecclesiastical personages figured in it. But I should be justified in holding that the very position of commanding influence, occupied by St. Andrew's congregation, made it more imperatively necessary for the ecclesiastical authorities in this case to resist the slightest inroad upon their rights. Had it been an obscure rural congregation that was involved, so much

injury to the Church could not result, as must result if no restraint is put upon the trustees of St. Andrew's Church. Although the prosecution was directed against the Minister as well as the Trustees of the Congregation, that I suppose was on account of the legal designation of the Corporation, and I do not regard my *confrere*, Mr. Lang, as necessarily to be held responsible for the course of the defence: he is only one of many. I am loath to believe, notwithstanding the evidence to the contrary in this case, that a gentleman who stands so deservedly high in the estimation not only of his own flock, but of the public generally, for his heartiness, energy, public spirit, and ready talents, should hazard injury to his influence and reputation by advising a line of defence that, whatever temporary ends it could gain, could only react unfavorably upon his own office as minister and moderator of Session, as soon as the matter came to be thoroughly understood.* It might be convenient to get rid of the presence of a troublesome member of Session by cutting the Gordian knot, Alexandrine fashion; but I fain hope Mr. Lang was no party to the act of the Trustees in trampling upon the prerogatives of the Session and Presbytery; for while he is only accidentally a member of the Trustees, it is essential to his office to be Moderator of Session and a member of Presbytery.

I do not know that it is necessary to give reasons for this publication. Impartial readers, I believe will infer

* As in duty bound I was inclined to give Mr. Lang the benefit of the doubt in this connection, although a witness friendly to him testified that the action of the Trustees was taken under a threat of resignation from the Minister. But since the above was written and set up, he intimated at the Presbytery the aquiescence of the Session in the procedure of the Trustees, and wished others to regard the two distinct bodies, the Session and Trustees, as identical in the law suit. Of course, it does not follow that because the Session were consenting parties to the action complained of, therefore that action was not subversive of their authority. It only makes matters worse by showing that the Session could condescend to disparage their own office in order to get rid of Mr. Johnston when they found it difficult to do this by any action of their own.

from the nature of the case that no other course was left for me in consideration of my convictions and my ordination vows. This case was removed by the Plaintiff beyond the reach of ecclesiastical law, inasmuch as the Trustees were a corporate body, recognized by the law of the land, and might have pleaded that they were not answerable to the Church Courts; so that no opportunity can offer for reviewing it before an ecclesiastical tribunal; and unless it were exposed through the press, the gross violation of the rights of our people would escape censure altogether. The newspaper conductors of this country have neither the knowledge of these matters necessary for dealing with them successfully, nor are the generality of their readers sufficiently interested in such questions to make it worth their while to give up their columns to discussions upon them. But I can fancy what a storm of indignation would find expression in the press of Scotland, if the authorities of any church in that country, could have ventured to violate the rights of a member and elder of the church, as the St. Andrew's Church corporation has done! Besides, in a letter to the *Herald* on the 10th Nov. 1873, to which I was not permitted to reply, Mr. Lang challenged my declaration that "the rights of church members" and "the prerogatives of spiritual courts" were involved in this suit,—he replied that they "were not in this particular instance endangered by the dealing of the temporal authorities." As I felt it was scarcely a proper thing to have carried on a public correspondence on the question, even to the extent I did, when the matter was in the hands of the judge, I took no further steps at that time to defend my position, and bore with as good a grace as I could, the disadvantage under which I was placed by the *Herald's* allowing Mr. Lang the last word. But now that judgment has been rendered, I feel freed from that restraint.

In that letter Mr. Lang also says, "It is better that one minister of the Gospel should not meddle or interfere with

the concerns of another." As Mr. Lang was careful not to accuse me of doing so, but merely laid down a general principle, in which I heartily concur, it is not necessary for me to say anything in defence of my own particular conduct in connection with this case and other cases in which St. Andrew's Church has been concerned. When the affairs of that congregation came from time to time before the Presbytery, through internal dissensions, it was always a most painful and disagreeable business to have anything to do with them. But in a Presbyterian church, congregations have no complete autonomy, as they have in those churches maintaining the policy of Independency; but are only individual links in a chain, each running into the other, and so forming parts of the other. According to the constitution of our Church, each congregation is in some measure responsible for every other congregation's conduct. This is the theory of the Church. Whether it is the best policy, ideally or not, is not the question at issue. Mr. Lang's plea for being allowed to manage the affairs of his congregation as he pleases, is therefore directly in the face of the constitution of the Church, even though the congregation were unanimous. So long as St. Andrew's congregation enjoys the *prestige* and privileges that accrue to it from belonging to the Presbyterian Church of Canada in, connection with the Church of Scotland, it must accept the *surveillance* that the Church imposes. The Synod assumes supreme jurisdiction "in regard to all matters, ecclesiastical and spiritual, over all the ministers, elders, church members, and *congregations* under its care." And every member of Synod has therefore the right to take cognizance of how congregations carry out the principles of the Synod, and to draw the attention of the Church courts to anything he may deem irregular in congregational action. If any member of the Presbytery has a right *of his own motion* thus to call attention to the affairs of St. Andrew's Church, much more

has he the right when members of that congregation bring these affairs under his notice, and call for judgment upon them, to express his views regarding them. The right of appeal to the Presbytery from the action of Sessions and congregations has always been regarded as the *palladium* of our Church—equally in the interests of minister and people. And in this manner the "concerns" of St. Andrew's Church have been brought before other ministers, very much to their disgust, and they are not justly charged, even by insinuation, with interfering in the affairs of that congregation when they express their honest opinions upon these affairs as brought regularly under the review of the Presbytery. It fell to me, failing any one else, to move more than once in the Presbytery, resolutions vindicating Mr. Johnston; and now I may be expected to defend my views, when they are assailed, outside the ecclesiastical courts. I can appeal to my past record as a proof that I have always stood by my brethren in the maintenance of their rights; but I do not think the *esprit du corps* makes it necessary for a minister to endorse any irregularities of which he may believe his *confreres* gu`ty. Further, I know for a fact that many judicious laymen outside of St. Andrew's Church had their faith in the wisdom of Kirk-Sessions considerably shaken by the course taken by that of St. Andrew's Church in their treatment of Mr. Johnston; and therefore the interests of the Church at large call for this protest against the part they have taken in these transactions. No man of any independence of mind or vigour of thought could be got to accept the office of elder, if he were liable to be thrust out of the Session by violence for maintaining firmly his own opinions; so that the future standing of Sessions depends upon the vindication of Mr. Johnston's rights. And if it be said that it is invidious in a clergyman to set himself to criticise a decision of the civil courts, I have only to reply, that I have myself sat as a judge (ecclesi-

astical) on part of the case which was brought under the notice of Mr. Justice Johnston, and therefore it is only one judge maintaining his own position and criticising the decision of another judge, which is no uncommon thing in the domain of both civil and ecclesiastical affairs.